

## REMARKS

### Examiner Interview

The Applicant thanks Examiner Stewart for the courtesy extended during a telephonic interview conducted on October 17, 2007 to discuss prosecution of the subject application. In the interview, the Applicant pointed out discrepancies in the non-final Office Action dated January 29, 2007 and the final Office Action dated July 23, 2007. With regard to the non-final Office Action, claims 54 and 55 were objected to, but were indicated as allowable if rewritten in independent form. (See Office Action Summary and page 4). To the end, the Applicant rewrote claims 54 and 55 in independent form without submitting further arguments or amendments. (See Response filed April 24, 2007). With regard to the final Office Action, claims 54 and 55 were once again objected to, but were indicated as allowable if rewritten in independent form. (See Office Action Summary and page 4).

At the conclusion of the telephonic interview, Examiner Stewart requested that the Applicant submit a further response to the final Office Action to specifically point out the above-discussed discrepancies, which would be followed by issuance of a non-final Office Action to clarify the status of the pending claims, including independent claims 54 and 55. The Applicant would thereby be given an opportunity to respond to any further objections or rejections set forth in the non-final Office Action.

### Allowed and Allowable Claims

The Applicant thanks the Examiner for the indication that claims 15-23, 41-43, 52, 65 and 67 have been allowed. The Applicant notes that dependent claim 51 depends from allowed independent claim 41, and is submitted to be in condition for allowance.

As set forth in the final Office Action dated July 23, 2007, claims 54 and 55 were objected to, but were indicated as allowable if rewritten in independent form. As discussed above, claims 54 and 55 have already been rewritten in independent form in response to the previous non-final Office Action dated January 29, 2007. Additionally, the Applicant notes that, in response to the previous Office Action, claim 40 was amended to depend from rewritten independent claim 55. In the current response, dependent claims 45, 46 and 47 have been amended to depend from

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rewritten independent claim 55. Dependent claims 49 and 50 depend indirectly from rewritten independent claim 55.

Based on the indications of allowability set forth in the final Office Action and the previous non-final Office Action, the Applicant submits that rewritten independent claims 54 and 55 are in condition for allowance, and allowance of the same is respectfully requested. Additionally, claims 40, 45-47, 49 and 50 each depend either directly or indirectly from rewritten independent claim 55, and allowance of the same is also respectfully requested.

**Independent Claims 44 and 48**

Independent claims 44 and 48 have been cancelled from the subject application without prejudice for possible submission in a continuing application.

**Independent Claim 71**

Independent claim 71 has been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,599,086 to Doty. The Applicant submits that the grounds for rejection set forth in the final Office Action do not address each of the features and steps recited in independent method claim 71. Specifically, there is no indication in the Office Action regarding any disclosure in the '086 patent that teaches the use of "a tubular sleeve", or that teaches the steps of "advancing a surgical device through the tubular sleeve toward the intervertebral space" and "transmitting an axial reduction force to the anteriorly offset vertebra to reduce the spondylolisthesis condition". The Applicant has thoroughly reviewed the '086 patent and can find no reference whatsoever regarding these recited features and steps. Additionally, although the Office Action indicates that "the device of Doty is capable of treating spondylolisthesis", the Applicant notes that independent claim 71 is a method claim. In order for a reference to anticipate a method claim, the reference must disclose the recited steps or acts, and not merely a structure that is capable of performing the steps or act.

For the reasons set forth above, the Applicant submits that independent claim 71 is not anticipated by the '086 patent, and respectfully requests withdrawal of the rejection of independent claim 71 and allowance of the same.

**RECEIVED  
CENTRAL FAX CENTER****OCT 17 2007****CONCLUSION**

In view of the foregoing remarks, it is respectfully submitted that Applicant's application is in condition for allowance with pending claims 15-23, 39-43, 45-47, 49-52, 54, 55, 65, 67 and 71.

Reconsideration of the subject application is respectfully requested. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

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